A

TREATISE

CONCERNING

ADULTERY

AND

DIVORCE.

Νόμοι

Ὁ εἰδὼς πορνεύειν τὴν ἑαυτῦ γυναῖκα καὶ σιωπῶν πορνοβοσκός ἐστιν.

Πάντας ὅσοι τὰς γυναῖκας αὐτῶν μοιχευομένας εὑρίσκοντες μὴ ἀπολύουσι, τιμωρεῖσθαι κελεύομεν· Πορνοβοσκός ἐστιν, ὁ τὴν ἑαυτῦ γαμετὴν μοιχευθεῖσαν μὴ ἀπολύσας ——

Blastaris Syntagma Alp. Let. M.

London: Printed by R. Roberts. 1700.

A TREATISE CONCERNING *Adultery* and *Divorce.*

ADULTERY is, ſay the Etymologiſts, [a] the going to another's Bed: and St. *Auguſtine* defines it to be a [b] *Breach of the Marriage-Vow*; A Crime ſo black, that our Conſtitutions call it [c] horrible Baſeneſs; [d] and a Sin ſo abominable in God's ſight, that he could not find a fitter word than this to expreſs Idolatry by in the Holy Scripture: And Our Church is ſo induſtrious and careful in the

Refor. Leg. Eccl. Tit. Adulter. c. 1.

Art. Viſit. Lond. Tit. 4. n. 3.

[a] Ad alterius torum acceſſio.
[b] Fidei conjugalis violatio.
[c] Turpitudo horribilis.
[d] Et res Deo tam odioſa.

discovery of it, that it is one Article in the Episcopal Visitations, Whether any have committed Adultery, Fornication, &c. or are vehemently suspected of the Premises?

The Punishments inflicted on it all over the World, partly shew how much it is detested. By the *Levitical* and *Civil* Law of *Moses* it was rewarded with *Death*. The *Hungarians* use that Punishment; the Father forcing his Daughter, the Husband his Wife, and the Brother his Sister to the Place of Execution. *Heylin.* And among the *Turks*, the Offending Woman is sentene'd to be Drown'd, and the Man Dismembred. The *Babylonians*, *Arabians*, *Tartars*, *Indians*, *Javans*, *Brazilians* and *Mexicans* also made it capital; so did the ancient Imperial Laws: but latter Ages are contented with *Confinement* and *Whipping*; and the Ecclesiastical Canons prescribe *Excommunication*. By a Constitution of the Church, in the time of the *Saxons*, such lewd persons were compared to Murderers, and equally denied Christian *Burial*. And there was a Law about the Year 1032, whereby the Adultereſs was to lose her *Nose* and *Ears*. St. *Paul* saith, No such person shall enter into the Kingdom of God: and

and as to this World, the Gospel allows us to *put* her *away*, Matth. 5. 33. and *c.* 19. 9.

If instead of *Allowance* I had said *Precept*, I think I might do it with more reason than St. *Mark* had to call the Bill of Divorcement τὴν ἐντολὴν, when it was only an Indulgence wrested from *Moses*, because of the *hard hearts* of the *Jews*, who otherwise might have murdered their Wives, if they had not had leave to part with 'em. They were a stiff-necked people, as God himself often called them, inclined to slaughter, saith St. *Chrysostome*, filling their Houses with Relations Blood, and sparing neither their Neighbours Families, nor their Own. On this Consideration it was, we find that permission, *Deut.* 24. 1. *When a man hath taken a wife and married her, and it come to pass she find no favour in his eyes, because he hath discovered some uncleanness in her; then let him write her a bill of divorcement, and give it into her hand, and send her out of his house*---- If he did not like her, he might dismiss her. The ground of this dislike is said to be some *uncleanness*, or matter of *nakedness*; which cannot mean *Adultery*, because Adultery, if proved, was punished with Death, as I said; and if only

only ſuſpected, the guilt of it was determined by the *Water of Jealouſy*, Numb. 5. 27. The word therefore muſt ſignify ſomething diſagreeable in her Perſon, Humour, or Actions, which the Husband could not digeſt, and thereupon deſired to be rid of her, as Mr. *Ainſworth* and *A lapide* conceive, who cites *Origen* and *Chryſoſtom* for this Interpretation; and the Aſſembly of Divines explain it of the *Leproſy*, or ſome other *bodily diſeaſe* and *blemiſh*; and in general, *any thing* elſe to make the Husband loath her. This fully appears in the practice of that people, who thought it a good Foundation to build a Divorce on, if the Wife were *ſterilis, deformis, rixoſa, moroſa*, barren, ugly, peeviſh or diſagreeable: and in the words of *Siracides*, Eccl. 25. 29. *If ſhe did not go as her Husband would have her, he cut her off from his fleſh, and gave her a bill of divorce, and let her go*: As it is ſaid of *Joſephus*, That he diſmiſs'd his Wife, becauſe he did not like her Manners.

This, doubtleſs, was ſtraining the Point too far, to make the *uncleanneſs* depend more on the imagination or prejudice of the Man, than on the Wife's *ill conduct*, or whatever elſe of like

like nature ſhe was chargeable with. Yet we have not theſe Examples in *Judæa* alone, but in other Countries alſo, where Men pretended to more Civility and a better Temper. *Q. Antiſtius*, a Noble *Roman*, Divorced his Wife for talking familiarly *cum libertina*. *C. Sulpitius* uſed his Wife in the ſame manner, becauſe ſhe went abroad without her *Veil*. Another did the ſame, *propter prætextum ſterilitatis*, on pretence of Barrenneſs; which was an Objection his Wife could not help, and not her fault, but misfortune. *P. Sempronius*, becauſe his Wife went to a *Play* without his knowledge, put her away. *Julius Cæſar* dealt ſo with *Pompeia*, *Quia mala laboraret fama*, being ſuſpected to have to do with *Clodius*. But *M. Tullius* acted on much ſlighter Reaſons; and, *Levibus de cauſis Terentiam dimiſerit*. And *Auguſtus* outdid 'em all in this matter, for he could except nothing againſt *Scribonia*, but that *he was weary of her*. I omit *Montanus*, the *Cataphrygæ*, *Pepuſiani*, *Ebionitæ*, *Maſſalini*, and Others in Church-Hiſtory, who took the ſame liberty. And we read of an Eccleſiaſtical Law in *Wales*, *Circa* 940, which made it a ſufficient Cauſe of Divorce, if a Woman Kiſſed *any man beſides her Husband*.

In

In all these Cases, I must confess, the *Conjugal-Knot* was not look'd on so sacred and strong as it ought to have been: And therefore our Christian Lawgiver corrects these Abuses, and puts every one in mind of the Nature of Marriage, which out of *two* makes *one*; and so strictly unites 'em together, that after this Union *they are not two, but one Flesh.* This was it God intended in the first Institution, to which Christ called back the *Jews*; and then added, *What God hath joined together, let no man put asunder.*

But though this Language shows what a close conjunction Matrimony makes between a *Man* and his *Wife*, which is not rashly, or, *quâcunque de causâ* (as the Jews *said* and *did*) to be dissolved; yet plainly our Lord's reproof of the *Pharisees* is not to be taken *absolutely*, as if nothing in the World could disjoint these two persons; but *relatively*, and with respect to them he was disputing with, and in opposition to those Reasons they went upon for their frequent Divorces. *I say unto you, Whoever shall put away his Wife*, except it be for Fornication, *and shall marry another, committeth Adultery*, Matth. 19. 9.---So that the *instance*

inſtance excepted is a ſufficient Cauſe of putting away the Wife, though the Text will not admit of any other. For though a *Rule* or *Law* is univerſally binding, where no Clauſe is inſerted to provide for particular Caſes; yet whenever ſuch proviſion is made, the *exception* is ſafe, and as ſtrong in *its ſenſe* as the Law is in the *other* quite oppoſite to it; for ſo we uſually ſpeak, *Exceptio ponit contraria in caſu excepto.* And therefore though in the general, it is not lawful upon any pretence to lay aſide one's Wife, *ſaving for the cauſe of Fornication*, Matth. 5. 33. this *ſaving* infers, That though *no* Reaſon *beſides* this has force enough to diſſolve Marriage conſummated, yet *this* muſt be allowed a ſufficient Reaſon for it, or elſe the *Exception* was in vain.

They ſay St. *Mark* and St. *Luke* have omitted this Exception, and thereby ſignified the little Streſs to be laid on't. But we anſwer with St. *Auguſtine*, That the Four Evangeliſts do [a] ſupply one another; and where one omits, the reſt make it up to compleat the

[a] Mutuas operas tradere, & quod unus brevius & obſcurius poſuit, illud alter ſuppleat & clarius explicet.

Goſpel. St. *Matthew* is copious, and full in the Matters he treats of. St. *Mark* (as St. *Jerome* calls his Book *Epitomen Evangelii à Mathæo ſcripti*) giving only an Abſtract of St. *Matthew*, he induſtriouſly let go many particulars, which however muſt not loſe their Evidence, becauſe he paſt 'em. This is the uſual way of *Abbreviators*. But then it cannot be imagined that *Short-hand* is plaineſt, or beſt adapted to every Reader's capacity: Or that St. *Mark* ſhould ſpeak more intelligibly *without* the Exception, than St. *Matthew with* it; eſpecially conſidering He was one of the Diſciples preſent at this Diſcourſe with the *Phariſees*, and ſo had better opportunity to know his Maſter's meaning. The Rule is, *Pauciora exponi debent ſecundum plura, & regula generalis per exceptionem alibi traditam eſt limitanda.* And this ſhews, how S. *Mark* and S. *Luke* are to be underſtood in this affair.

But for further light, let us reflect on the Occaſion of theſe words, and debate the Queſtion in this ſhort Dialogue between the *Phariſees* and *Chriſt*.

Phariſees.

Phariſees. Is it lawful for a Man to put away his Wife for every Cauſe?

Chriſt. No; for Marriage is *Copula indiſſolubilis*, an indiſſoluble Tie; and by it *two are made one fleſh.*

Phariſees. Why did *Moſes* then Command to give a Writing of Divorcement, and to put her away? This proves it Lawful.

Chriſt. *Moſes*, becauſe of the hardneſs of your hearts, ſuffered you to put away your Wives; but from the beginning it was not ſo. You confound the Laws concerning Marriage, or rather propoſe a *Toleration* inſtead of a *Law.* The Queſtion between us is not *de lege* Forenſi, of a Municipal; but *de lege* Morali, of a Moral Law; and concerning the Senſe of the Inſtitution of Marriage immediately after the Creation. The *former* indeed permitted Divorce, becauſe of your Cruelty to your Wives; but ſtill with reſpect to Conſcience,

you cannot ſafely uſe that liberty, for it is a Sin againſt the *latter* Law; and be well aſſured, that though *Moſes* doth not *puniſh*, yet God doth not *approve* it.

Phariſees. Do you deny then all Cauſes of Divorce?

Chriſt. No; I except what the Law puniſhes, and ought to puniſh, as a thing in its own Nature not to be reconciled to the notion of Marriage; I mean *Fornication*, which makes it impoſſible for the Man and the Woman to continue *one* Fleſh any longer: And if at any time the Penalty of the Law be not exacted in this Caſe, yet the Party guilty by that Act of Uncleanneſs voids the Obligation, forfeits the Intereſt ſhe had in her Husband; and by joining herſelf to another, becomes Morally dead to him to whom ſhe was united before. So that, *I ſay unto you, Whoſoever ſhall put away his Wife, except*

it

it be for Fornication, and ſhall marry another, committeth Adultery; and whoſo marrieth her which is put away, doth commit Adultery.

Can words be plainer? Nothing but *Fornication* can untie the Marriage-Knot, and make Divorces innocent. *Fornication* therefore is a juſt Ground and ſufficient Warrant for ſo doing; or elſe what ſenſe is there in theſe words? and what End could Chriſt have in making the *Exception*? So that in this caſe, and upon this account, whenever there is a Divorce, it is not *Man*, but *God* parts 'em. No; *Homo non ſeparat, quos pœna condemnat, quos reatus accuſat, quos maleficium coarctat.* The ſame Authority which made 'em *one* fleſh, diſſolves the Union; and becauſe of *Fornication*, makes 'em *two* again.

It is ſaid, *Ex matrimonio duo ſunt facti una caro*: and the Inſinuation is, That nothing can divide 'em, but that which disjoints Soul and Body, the Death of either Party: And this is true in the main. But the Caſe of *Adultery* ſhakes the Propoſition; and the Wife who goes aſtray, by the *Carnalis copula*, becomes *one*

fleſh

flesh with the Fornicator, as he that is joined to an Harlot is *one body* with her, as St. *Paul* speaks, 1 *Cor.* 6. 16. So that the *Vinculum conjugale* is hereby dissolved, because it is not to be conceived how She can be *one* with her Husband, and with the *Adulterer* too, for the Apostles Reason immediately following; wherein he asserts, that only *two* can be *one flesh*. I spake in the Actual Tense, and said, It is *dissolved*, though not literally done; but there is the *Cause* of dissolving it; and if a Man will not use his Right, and lay hold on the Forfeiture, 'tis his own fault, and he will be much to blame. I call it *his fault*, because he who *Celat crimen uxoris*, conceals his Wife's fault, makes himself *Turpitudinis patronum*, a Patron of her Lewdness: And herein I am of St. *Chrysostom*'s mind, or whoever else is the Author of the imperfect Work; That *as it is a cruel and wicked thing to put away a chaste Wife, so he is a Fool that will keep an Whore.*

An Husband may, if he please, *Cedere de jure suo*, and forgive an unclean Wife: but *Calvin*'s Judgment I take to be safer, To cleanse his House and Bed of so gross a defilement, and be rid of her and her Sin together. And hence

hence the word *repudium* has its Name, *Recuſatio propter rem pudendam*; and I think a Man ought to be very careful how he is acceſſory to any thing that will bring him ſhame. This is one Reaſon they uſually give for Divorce; namely, To ſecure our own Integrity and Honour, and keep off the ſuſpicion of being privy to the Sin. And I muſt not omit another of very great Conſequence, and that is, *prolis incertitudo*, uncertainty of the Iſſue; which, without a Contradiction, brings *Baſtardy* into *Wedlock*; becauſe though it be a Rule in Law, that, *Pater eſt quem nuptiæ demonſtrant*, He is the Father who is Husband to the Wife; yet in *foro Conſcientiæ*, the Court of Conſcience, perhaps the Man, to be ſure the Wife, is convinced to the contrary: And for my part, to ſpeak in the way of Morality and Religion, I find no difference between theſe two Baſtards, but that the one is *really*, and the other *legally* ſo. And on this account it is, That although the Sin of Adultery is very great both in the Husband and the Wife; [a] yet, as to the Iſſue, the Wife is much more

[a] Quantum ad bonum prolis plus peccat adulterium uxoris.

blame-

blameable: And it muſt be conſider'd, that the Wife's Incontinency ruins the Family of her Husband, who leaves in his ſpurious Iſſue nothing but the Name, and conveys to Poſterity not one drop of his Anceſtors Blood to continue the Relation between 'em.

We may obſerve at the Office of Matrimony, in the Exhortation to the Young Couple, the Miniſter *requires* and *charges* them both, That if *either of 'em know any Impediment why they may not be lawfully joined together, that they confeſs it: For,* ſaith he, *be well aſſured, that ſo many as are coupled together otherwiſe than God's Word doth allow, are not join'd together by God, neither is their Matrimony lawful.* So that in Marriage there is a conditional Contract; Neither doth God ſo join the Man and the Woman together, but that they may be parted, if there be a juſt Reaſon for it; and in caſe of ſuch Impediment, their Matrimony is not Lawful. *Fornication,* I confeſs, is in this Queſtion a *ſubſequent Act,* and is not called an *Impediment*; but they differ only in point of Time; and if the *Impediment* keeps the Knot *untied,* notwithſtanding the Ceremony is paſs'd upon

upon them; why, if once effectually tied, ſhould not *Adultery* have the ſame ſtrength to undo it? The *Tie* conſiſts in this, That they *two are made one fleſh*: But if the Adultereſs alters the property, and becomes the Fleſh of another Man, in this caſe ſhe diſſolves the Bond with reſpect to her Husband, and is no longer *one fleſh* with him. *Solvitur carnis unitas, nefariè rumpitur conjugalis fides & peccatur contra ipſa matrimonii ſubſtantialia.* So that if the Goſpel had been ſilent in this Cauſe of Divorce, yet not *forbidding* it, it muſt be underſtood from the very Nature of the Conjugal-Union, which ſuppoſes neither Party alienated in Affection or Duty, as one of them muſt needs be in caſe of Fornication. This Union, I ſay, being the very Eſſence of Matrimony, the Name is loſt, when an Act is done which divides one Party from the other. However, the Goſpel of Chriſt doth allow it, and lays as great a ſtreſs on it, as the Church can on any other Impediment whatever; which being proved, makes the Matrimony unlawful.

If it be Objected, That the *mutual Troth* given each to the other, before the Miniſter,

runs in this Form of Obligation, That the Husband takes the Wife, and the Wife the Husband, *for better, for worſe, till Death parts them.*

We Anſwer: 1. Theſe words, *for better, for worſe*, do not imply an irreligious or immoral Senſe, (for this amounts to ſuch an Impediment as our Church propoſes to make Marriage unlawful;) but their meaning is determin'd by the following Clauſes, *For richer, for poorer, in ſickneſs, and in health.* [a] If ſhe be a ſcold, peeviſh, prodigal, clowniſh, drunken, ugly, a fool, troubled with a thouſand ſuch defects; which are very ill qualities, and ſuch as makes *Solomon* confeſs, That *it is better to dwell in the Wilderneſs, than with a contentious, angry Woman*, Prov. 22. 19. [b] If the Wife be barren, ſickly, blind, lame, or deaf; or if you can think of any thing elſe, ſaith St. *Auguſtine*, except Fornication. And accordingly the Rule of the Law is, [c] Adverſe fortune, if there be

[a] Si ſit jurgioſa, petulans, prodiga, ruſtica, ebria, deformis, ſtulta, & aliis mille vitiis moleſta.

[b] Si uxor ſit ſterilis, debilis, cæca vel clauda, vel ſurda, vel ſiquid aliud cogitari poteſt, excepta fornicatione.

[c] Fortuna afflicta, ſi abſit culpa, patienter in conjugio ferenda eſt.

no

no fault, is patiently to be born in Matrimony. And ſo *Ariſtotle* concurs in his Oeconomicks, and ſaith, *It becomes a Wife to acquit her ſelf well towards her Husband, not only in a good, but a bad fortune: and ſhould his Eſtate ſuffer by ill chance or miſmanagement, or his body by ſickneſs, or his mind by phrenzy, ſhe is to bear the affliction cheerfully, and retain the ſame reſpect and affection ſhe had for him before.* And the Rule in this Caſe is, *Quod ſemel placuit, diſplicere non poteſt*; meaning, *non debet.*

2. *Till Death us do part.* Doth not conclude a ſimple Obligation, from which there is no releaſe, until Death makes it; becauſe the Lord Chriſt pronounces *Fornication* to be a ſufficient reaſon to break the Bond, and diſmiſs the Wife, if ſhe be found guilty; but refers to the Qualities or Circumſtances of the Wife in the words before; which though bad enough, are no legal incapacities for Cohabitation; neither is the Wife thereupon to be diſcharged from her Husband without her own conſent, who either muſt keep her at home, or otherwiſe provide for her. Beſides, This period of the Obligation is grounded on the antecedent Suppoſition, That the Woman

forſakes all other Men, *and keeps only to* her Huſband *as long as they both ſhall live.* And this Promiſe being obſerved, the Bond is not cancelled till *Death* doth it. But if the Wife forſakes her Husband, and keeps company with others, the Condition is broken, and the Motive ceaſes on which he married her. For the Condition of this ſolemn Engagement was, That She forſake the reſt of Men, and be from thence-forward entirely his own.

Laſtly, The Marriage-Vow, however worded, is to be taken *according to God's holy Ordinance:* But the Ordinance of God, with reſpect to Marriage, is, To make of *two* one fleſh; yet with this Caution and Proviſo, That there be no *Fornication*; for if ſo, the innocent Husband has a power left him to put her away. So that the ſame Ordinance which makes the Obligation, allowing this liberty, Though where *Fornication* interpoſes not, the Husband and Wife are to keep cloſe to one another *as long as they live*; yet where Either tranſgreſs, there is a remedy left; and if the Woman will offend, (and perhaps in a daring, bold way, void of all ſhame, and in defiance of her Husband) without doubt the

the Husband in this Case may lay hold of the Forfeiture, and as soon as he pleases send her away.

And truly otherwise the Case of the Husband would be very hard, *Quod inducitur in favorem alicujus*, should, *facere ei prejudicium*, as they say: That a thing intended to ease the burden, should add more weight to it. The Causes for which Matrimony was ordained, we have in the Exhortation to the Couple going to be married, which are designed for the Comforts of life, and not to be plagues to one another. We do not serve an hard Master. He considered our condition, and of himself said, *It is not good for man to be alone, I will make him an help-meet for him.* Gen. 2. 18. This was the Motive he had to produce Woman, and did it out of him who was to be her Husband, to let her see how near the Relation is between 'em, and how she ought to cleave to him. This he did as *Creator*; and then as a *Law-giver*, he instituted Marriage to confirm their mutual Indearment; that as in their *Original* they had *one* beginning, [*Bone of my bones, and flesh of my flesh*, saith *Adam*;] Ver. 23. so the Ordinance was contrived to unite 'em by

by Conſent, and engage 'em into a voluntary Promiſe to love each the other. And becauſe he foreſaw it would ſometimes otherwiſe happen, and there be a Violation of Faith, though never ſo ſolemnly given, he appointed a remedy, a ſevere, terrible one, no leſs than Death it ſelf, to ſignify the Violence done this Union of two Bodies, which he would have us look upon full as ſtrict as between Body and Soul, not to be divided till Death parts 'em. 'Tis true, the Clemency of the Goſpel interprets the Puniſhment now into no more than *putting her away*; but then this is a *Moral death* to the guilty Party, and it lies in his Breaſt who is thereby injured to put it in Execution, as ſoon as he ſhall think fit to do it.

Obj. Ay, but this rigour may be thought not to conſiſt with the Patience and Sweetneſs of our Chriſtian Profeſſion.

Anſ. I muſt acknowledge, That *Charity ſuffers long, and is kind*: But the ſame *Charity doth not behave it ſelf unſeemly. Non patrat quod pudendum eſt*, ſaith the *Syriack*, ἐκ ἀσχημονεῖ, doth nothing *fœdè* or *inhoneſtè*, as certainly a Man muſt do who keeps an Adultereſs in his Boſom, and by a wicked Indulgence contributes to her Sin.

The

The Inſtance of the *Adultereſs*, whom Chriſt no otherwiſe puniſhes than by bidding her *go and ſin no more*, John 8. is anſwered by that Rule of the Law, [a] That an Act of Grace ought to be no Example to Criminals: Beſides, if this paſſage be well conſidered, What Chriſt did was as much an Act of *Juſtice* as *Mercy*; and though he did not condemn, yet he did not expreſly forgive her. *Neither do I condemn thee*: Nor indeed had he reaſon to do it, for he acted judicially in this caſe; and if the Evidence withdrew, and would have no hand in the ſtoning of her, what could he do otherwiſe than to diſcharge her? diſcharge at leaſt the Puniſhment at this time, though he did not fully and ſimply abſolve her. At moſt this treating her with ſo much Clemency, only inclines Husbands to be merciful and tender, but *obliges not*: And though Men may forgive this Offence in their Wives, if they ſee good; yet if upon Reaſons of Diſcretion and Safety they do not, 'tis no Sin at all, no pinching upon Conſcience to uſe 'em

[a] Quod alicui gratioſè conceditur non debet ab aliis in exemplum trahi.

as they deſerve; and in that manner the Goſpel allows it.

That *David* took *Michol* again, though married to another Man, is nothing to the purpoſe; becauſe this was no *Adultery* in *Michol*, who had no deſign to leave *David*; but being young, ſhe was forced to accept of *Phalti*, the Son of *Laiſh*, at the Command of *Saul*, her Father and King. And therefore *David* conſidered this Act in her (as indeed it was) a matter of Conſtraint; and ſo without much ſcruple receives her again.

Theſe and ſome other ſuch Reaſons St. *Auguſtine* preſſes, and ſaith, *Adulteram nec poſſe nec debere repudiari, ſed partem innocentem de jure teneri ad reconciliationem.* The truth is, St. *Auguſtine* was a very compaſſionate and tender-hearted Man, ſenſible of his own faults, and ready to retract 'em; ſo that he was naturally led to argue for Reconciliation on any occaſion, and almoſt on any terms; neither could he tell how to put off a Penitent without forgiving him. And it is good Doctrine in the general: But his Maſter St. *Ambroſe* never taught him this Leſſon in particular. For as this Father aſſerts three Cauſes for

for a Man to part with his Wife, ſo he makes the *firſt* and principal of 'em to be *Fornication*. St. *Jerome*, who, as he could not agree with St. *Auguſtine* in other Points, ſo he is directly oppoſite to him in this; and avouches, *Adulteram nec poſſe nec debere retineri*, That an Adultereſs neither can nor ought to be taken again. Nay, he goes farther, and ſaith, That not only *ubicunque eſt fornicatio*, where there is Fornication; but *fornicationis ſuſpicio*, ſuſpicion of it; *Uxor dimittitur*, the Wife is to be diſmiſs'd.

And as for *Reconciliation*, I think *Bucer*'s Concluſion unanſwerable; Who reflecting on that Law in *Deuteronomy* 24. 2, 3. concerning the Bill of Divorcement, whereby leave is given the Woman to marry another----If this Second Husband ſhould either die, or hate her likewiſe, and ſo give her another Bill, the Firſt Husband muſt never receive her again, for this reaſon, *Becauſe ſhe is defiled--and that's an abomination unto the Lord*, v. 4. Now, as that Author argues, if ſhe be *polluta*, who was not only *married* to this ſecond Man, but did it by her former Husband's permiſſion, and

was juſtified in it by Law: If, I ſay, notwithſtanding this Allowance, ſhe was ſo polluted by this Second Marriage, as to be made ever incapable of being re-married to the Firſt Husband; much more polluted muſt that Woman be, who has committed Adultery againſt both the *Law*, and her *Husband*'s Will: and unfit is ſhe either to be retained, or in caſe of departure to be received again. No; *David*'s Reſolution is a good Precedent in this Caſe: *There ſhall no deceitful perſon dwell in mine houſe; the party that telleth Lies ſhall not tarry in my ſight. I will not dwell with vain perſons, neither will I have fellowſhip with the deceitful. I hate the Congregation of the wicked, and will not ſit among the ungodly.* And all this not barely as a *Duty*, but in point of Safety; becauſe *evil communications corrupt good manners*; and though *with the clean I may be clean, yet with the froward I may learn frowardneſs.* And therefore to ſecure our own Innocence, we are bound to ſhun them who are Enemies to it.

Obj. But what ſaith the Prophet? *Take heed to your ſpirit, and let none deal treacherouſly againſt the*

the Wife of his youth; for the Lord God of Iſrael ſaith, That he hateth putting away, Mal. 2. 16, 17.

Anſ. No doubt but God hates it, when a Man deals *perfidè* and *iniquè* with his Wife, and when he cauſeleſly leaves her, and not She him. Here was no crime of Adultery charged; no fault, but that the Husband liked another better. As matters thus ſtood, no wonder is it that God hated ſuch *putting away*. God, who was a witneſs between him and his Wife, *v.* 14.--- yet he ventures to break the Matrimonial-Covenant, made in the Preſence of God, who being a God of Judgment, he could not be thought to delight in ſuch a Man.

Obj. Well, the Apoſtle is expreſs, 1 *Cor.* 7. 10, 11. *Unto the married I command; yet not I, but the Lord; Let not the Wife depart from the Huſband, and let not the Husband put away his Wife*--- And elſewhere he allows no remedy, no releaſe but Death, *Rom.* 7. 2, 3.

Anſ. But as to the words of St. *Paul* in thoſe two Epiſtles, anſwer is made, That to ſpeak of *Matrimony* in it ſelf, or as it is in its firſt Inſtitution; and as it is *abuſed*, or with reſpect to thoſe Crimes directly againſt it, is very different. It is one thing to propoſe what is regularly and ordinarily done, according to Law; and another, what happens in extraordinary Caſes. What the Apoſtle ſaith in theſe Chapters, is to be taken *regulariter*, and not *in caſu*. The ordinary Tie of Marriage laſts unto Death; and then, and not till then, it is diſſolved. But *Fornication* or *Adultery* diſſolves it ſooner. So that the Holy Man diſcourſing here of the Nature of Marriage, and not of the Nature or Cauſes of Divorce, is not engaged in this diſpute; and citing him on this account, makes little to the purpoſe. The Interpreters of theſe Paſſages deliver themſelves warily: *Let not the Husband put away his Wife*---- What? Upon no account? Yes, but let it not be done *exceptâ causâ fornicationis*, ſay *Primaſius* and St. *Ambroſe*. *Non ſine juſtâ causâ*, ſaith *Chemnitius*, who ſuppoſes an Ellipſis in the Expreſſion. *Niſi ſit legitima cauſa*;

ſa; ſo *Marlorate*. But when there is *juſt cauſe*, that is, *in caſe of Fornication*: Hammond. It muſt not be *ultro ſuoque arbitrio*, and without *legitimâ præeunte cognitione*, *&c.* ſaith *Beza*; not arbitrarily, and without a lawful provocation. And this Author calls them *ineptiſſimos*, who from this Text would infer, That there can be no Divorce, no, not in the Caſe of *Fornication*; *Contra manifeſtè expreſſam à Chriſto adulterii exceptionem*, are his words. *Non ſine gravi & juſta cauſa*; A lapide. *Exceptionem quam Mathæo referente dominus expreſſit-- hic ſubintelligas*; Eſtius. The Aſſembly of Divines name not the Exception, but they refer to St. *Mathew*, both as to the Chapters and Verſes, where notice is taken of it; and their meaning is, That we are to ſupply from thence what is omitted by St. *Paul*. *Calvin* indeed wonders why he did not except *Adulterii cauſam*; but what Reaſon was there for him to mention the Exception, when the drift of his diſcourſe did not lead him to it?

But *Marriage* is ſaid to *ſignify to us the myſtical Union between Chriſt and his Church*. Now as there are many Offences done againſt him, *Obj.*

him, which he forgives his Spouſe; ſo ought we to be Followers of Chriſt, and of God, as dear Children: Be merciful, as our heavenly Father is merciful; and we ought to forgive, as we deſire to be forgiven. *Chriſtianus eſt Chriſti imitator.* Aug.

Anſ. And queſtionleſs this Divine Example is good, and we ought to imitate it. *Ut ſicut ille agit cum Eccleſia, ſic nos agamus, cum conjuge*; though the Caſe be different, yet God forbid we ſhould do otherwiſe. But be it remembred, That though God is *patient*, *gracious*, and *kind*, yet he has been provoked to give a Bill of Divorcement to his beſt-beloved People. And of this the *Jewiſh* Nation is an undeniable proof, with the Seven famous Churches of *Aſia*, which have their Candleſticks removed, and are at this day overwhelm'd with *Mahometan* Darkneſs. God's forbearance teaches us to do as He did, bear with many faults; but thorough-Apoſtacy is too black a Sin to expect ſo much Tenderneſs; and Adultery too groſs to be pardon'd at all, or eaſily done.

I am

I am no more for this kind of Separation, *quacunque de cauſa*, after the practice of the *Jews*, than I am for falling under the Cenſure of *Mecænas*, who was taxed of very great Inconſtancy and Lightneſs, becauſe he parted with his Wife more than once, and received her again. For if her Faults were ſmall, the Uſage was too ſevere to turn her out of doors; but if ſo notorious as to oblige him to it, 'twas an unaccountable Fondneſs and Eaſineſs to re-admit her.

The Law takes notice of many Cauſes of Divorce, beſides the groſs One of Adultery. Conſorting with, or entertaining Wanton Company againſt the Advice and Will of the Husband; Practiſing, or Conſenting to Practices againſt his Life or Health; Lying abroad without his Knowledge, and without any juſt Reaſon for it; Going againſt his Will to Plays, or other ſuſpected Places; *Morbus contagioſus*; and ſome other like Cauſes, which muſt needs make a Virtuous Man very uneaſy, his Life comfortleſs, and his Expences perhaps beyond his Ability. Any of theſe are great Provocations. All of 'em together who can bear? Eſpecially when *Adultery* conſummates

mates 'em; *Adultery* publickly known, talk'd of, and made the common Subject in every private Houſe and Tavern; and, which is a very ſad Aggravation, when the concern'd Party glories in the Lewdneſs, and with the Harlot in Scripture, wipes her Mouth, and ſaith, *All is well.* The *Sin* in ſecret is bad enough; And if a Man be ſo good a Chriſtian, has ſo much Affection and Patience as to *caution*, *intreat*, *admoniſh*, *earneſtly ſeek* and *perſuade Amendment*, and all to no effect, but the Wife will run on in her ill way; and not only ſo, but *laugh* at, *flout* and *threaten* her Husband, and (whereby her Tongue is *indicium malæ mentis*) maintain Doctrines which neceſſarily call his Safety into queſtion, in caſe he uſes his Authority and Power to reclaim her at home; and, in a word, have ſo little regard to her ſelf, or him, as to make the Crime become a ſcandal to all the World; What then remains in this Extremity, but to take the Example of God; Let her be gone; give her wholly up to her vile Affections, the Luſts of her heart, and all manner of Uncleanneſs.

Yet

Yet I am not againſt *Repentance.* I remember what the Church ſaith, [a] We earneſtly wiſh that the innocent perſon would pardon the guilty, and take her to him again: but then it muſt be [b] when there are apparent hopes of amendment. But, alas! how will this appear? Can a few words, extorted it may be from Neceſſity, or the importunity of Friends, be called Indications or Expreſſions of a penitent Heart? *Res magis intuenda quam verba*; Repentance is grief of mind for Offences committed: It rigorouſly chaſtiſes what is done amiſs: It always puniſhes the crime; and hence it derives its name: *Pœnitentia à pœna*, or *quasi punientia*; and if it be ſincere, [c] either equals or exceeds the crime, ſaith St. *Jerom.* The Publican *ſmote on his breaſt, and ſaid, Lord, be merciful to me a ſinner.* And the true ſign of Repentance is a thorough change, a real reformation. I take all this to be a work of

---

[a] Vehementèr optamus ut integra perſona damnatæ veniam indulgeat & illam ad ſe rurſus aſſumat.

[b] Si credibilis melioris vitæ ſpes oſtendatur.

[c] Aut æquat crimina, aut excedit.

Time. [a] The Council of *Ancyra* determin'd Seven years Repentance: The Thief indeed did it in a few moments; but his life was ſhort, and on that account the Divine Grace the ſtronger.

Beſides, *Reſtitution* is one neceſſary part of Repentance. But how? which way ſhall this be expected? when, as St. *Jerom* ſpeaks, it muſt puzzle Omnipotence to bring it about; and though God can do every thing, I am bold to ſay it, He cannot reſtore *Chaſtity* when a Woman has loſt it: And who will go about to propoſe an Equivalent for an ineſtimable Loſs, never to be recovered?

You will ſay, We are to accept ſuch *Reſtitution* as the nature of the thing will bear; that is, an *hearty ſorrow* for what is paſt, and amendment for the future. Neither do I deny, but theſe are good fruits or proofs of Repentance, and may be a means to ſave the Sinner in the other World, yet are not a proper Reſtitution in this. The *Murderer*,

---

[a] Septem annis pœnitentiam agat. *Concil. Ancyr. & Wormac.*

the

the *Traytor*, the *Felon*, has the ſame Plea; yet they muſt bear the preſent Puniſhment of the Law, and ſuffer now, tho' ſaved hereafter.

But how ſhall an Husband be convinced of ſuch a Repentance? [a] *Once bad, and ever ſo*, ſay the Lawyers upon very good grounds. For though it be poſſible for a Man or a Woman to become penitent, yet we ought to have as good Proofs to demonſtrate their Repentance, as we had Overt-Acts before of their being Criminals.

For my part therefore, I think [b] 'tis dangerous to attempt Reconciliation after Adultery: And one Reaſon is, Becauſe [c] the Wound is apt to bleed afreſh; and the Wound ought to be well and leiſurely healed, before we hazard the rubbing it. The innocent Party may perhaps be thought hard of in this Caſe: But *P. Æmilius*'s Anſwer ought to ſatisfy unbiaſs'd People; who be-

---

[a] Semel malus ſemper preſumitur eſſe malus.

[b] Periculoſum poſt commiſſum adulterium inter conjuges tentare reconciliationem.

[c] Vulnus ſubinde recrudeſcit.

ing found fault with for putting away a beautiful Wife, excuſed himſelf thus: [a] *No body knows where the ſhooe pinches but he that wears it.* It appears by this, That the crime of *his* Wife was ſomewhat *ſecret*: and as ſuch, I believe it one Teſtimony of his Kindneſs to her, That he rather ſuffer'd the People's Cenſure, than in his own Vindication to expoſe her Nakedneſs. And in other Caſes, where the Publication is made already by her own folly, I take it for a piece of Affection in the Husband not to divulge it further, or load the Vice by being particular in all the Aggravations of it.

And if at length the Husband will be melted, and is contented to paſs by all Provocations, he may, and there is no injury done him: *Scienti & conſentienti non fit injuria.* But it behoves him to conſider well what he is about; He ought to enquire, Whether it will conſiſt with his Happineſs, his Reputation, and other Conveniences of Life to do ſo: Whether it be agreeable to Conſcience,

[a] Neminem ſcire qua in parte calceus licet ſpecioſus foret, ſuos premeret digitos.

and

and the Duty he owes God and Religion, to give this countenance to a Crime of that nature; and whether he can find any great difference between cohabiting with an Adulteress, or an Harlot who is vicious through Necessity, and has not Bread to eat without it.

I have avoided the Citation of Councils and Laws, to keep my self from being tedious. But, in short, some of 'em allow *second Marriage* upon the Reasonableness of the thing it self, which St. *Paul* favours, 1 *Cor.* 7. 9. Others reject it for its ill consequence, as tempting people to be weary of the *first*: which indeed is no reason; for a distinction is to be made between a real and a feigned Cause; and if, on this Indulgence, Men may be tempted to bribe Evidence against their Wives in order to be rid of 'em, so may such Evidence take away Lives and Estates; and the Danger is full as great in the one Case, as in the other. However, for *putting away*, they generally agree in that; and where we read some *Canons* seemingly against it, they must be understood *absque causâ*, and in unlawful Cases: As *Canon* 48. *Apostolorum*; which

which Excommunicates him who puts away his Wife: This is meant, ſaith *Balſamon*, if it be done ἀδικλήτως, without Cauſe. And *Zonaras* Expounding the ſame Canon, has theſe words, [a] *Let the Husband ſend her packing.*

And for *Fathers*, they conſider *Fornication* a juſt Cauſe to diſmiſs one's Wife: And thoſe who oppoſe *ſecond Marriage*, do it on a principle of Tenderneſs, and to leave room for a Reconciliation after a ſerious and approved Repentance; which if the Husband, for Reaſons beſt known to himſelf (and of which he is the proper Judge) will not accept, [b] *Let him uſe his right, for he doth no one wrong in it*: And though thereby he may ſeem unkind to his polluted Wife, yet he cannot be ſaid to be unjuſt to her, but ſhe has been ſo to her ſelf and him.

And this principle of Tenderneſs I take to be the Motive for thoſe Diſtinctions or Degrees of Divorce; à *thoro*, à *menſa* & *thoro*,

[a] Maritus pollutam ex ſedibus ſuis excludet.

[b] Utitur ſuo jure, & nulli facit injuriam.

à *vin-*

à *vinculo matrimonii*; the two firſt being intended in a way of opportunity to make their peace with one another; whereas the laſt bars the door, and parts 'em both for ever.

F I N I S.

UMI